



May 6, 2004

Chairman Michael K. Powell
Federal Communications Commission
445 -12th Street, S.W., Room 8-B201
Washington, DC. 20554

Re: Ex Parte Letter in Docket #01-338

Dear Chairman Powell:

I am writing to express the gratitude of Advanced Fibre Communications (“AFC”) to the Federal Communications Commission for exhibiting foresight in its *Triennial Review Order* by eliminating much of the unbundling obligations for broadband services. As the resulting expansion in capital dedicated to broadband access technologies demonstrates, the marketplace does respond favorably to the elimination of investment disincentives. In order for the potential of increased broadband capabilities to develop fully, however, it is critical that you expeditiously fix one aspect of the *Triennial Review Order* on reconsideration – the presently disparate unbundling obligations imposed on fiber-to-the-premise (“FTTP”) versus fiber-to-the-curb (“FTTC”) in “greenfield” deployments.

Prompt Commission action in developing the proper broadband policy is even more important now that there is a widespread, bi-partisan recognition of the critical role broadband will play in enhancing all aspects of American lives. President Bush made clear that we must ensure that this country remains on the leading end of broadband technology by setting a goal of “universal, affordable access for broadband technology by the year 2007.” Likewise, a group of twenty Democratic Senators recently sent a letter to the President agreeing “with the need to make broadband a priority since the technology can add \$300 billion a year to the U.S. economy and generate more than 1.2 million jobs.” Universal broadband availability will benefit all Americans by enhancing productivity at work, enabling distant learning and telemedicine, and facilitating more efficient and robust communications capabilities among our people.

In January our Company met with several of the Commissioners’ Legal Assistants and staff from the Wireline Competition Bureau to explain our interest in the *Triennial Review Order* reconsideration and why we believe it is imperative that the Commission treat FTTC and FTTP the same. AFC is uniquely situated to address these issues because it offers a full line of broadband access technologies and capabilities, including both FTTP and FTTC, digital loop carriers with integrated DSL, video over DSL and VoIP. AFC does not believe that there is only one solution for making broadband access widely available.

As AFC explained in those meetings, the broadband technology that a carrier will deploy in a particular location will hinge on many factors, including: the geography, the demographics, the costs, the currently deployed technology, where to place responsibility for powering the



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necessary electronics, and where to provide the optical-to-electronic conversion of the signals. AFC believes that the carrier should base its decision as to which broadband access technology to deploy on these various engineering and economic considerations – not because of arbitrary regulatory distinctions between particular broadband architectures.

Since our meetings in January, two important events have occurred. The acquisition of the North American Access business of Marconi Communications, Inc. that we discussed has now closed, reinforcing the principle that AFC is committed to offering its customers a wide range of broadband access technologies. In addition, since our previous meetings with the Commission, the Court of Appeals upheld the portions of the *Triennial Review Order* that reduced the unbundling obligations of the incumbent carriers with regard to broadband technologies incorporating fiber optics and packet switching. The Court held that even if there were some impairment, the Commission properly relied upon the important public policy goals in Section 706 to decline to require unbundling.

Consistent with the standards enunciated by the Court in its decision and the Commission in the *Triennial Review Order*, the Commission should treat FTTP and FTTC the same. The record before the Commission when deciding the *Triennial Review Order* did not address whether there were any differences between those technologies because the *Triennial Review NPRM* indicated that the Commission considered them to be equivalent (*NPRM* at ¶ 50). The record on reconsideration now establishes that these two architectures should be treated the same.

Both FTTP and FTTC provide similar capacity in commercial deployment at present – 30 Mb/s for FTTP and 25+ Mb/s for FTTC – and both have demonstrated the capability of 100 Mb/s throughput. In addition, FTTP and FTTC presently support the same suite of services, including TDM voice, VoIP, high speed Internet, analog and digital TV and video on demand. Thus, the revenue opportunities are equivalent for both. Moreover, in both cases the absence of impairment is demonstrated by the fact that competitive carriers have deployed both FTTC and FTTP in competition with the incumbent carriers. Finally, the policy goal of encouraging the deployment of advanced communications capabilities is served equally well by FTTP and FTTC, in light of their service and capacity equivalencies.

On the other hand, if the Commission continues to apply disparate treatment to FTTC and FTTP, it will threaten the goal of universal, affordable access for broadband technology. As AFC explained previously, the choice of broadband architectures will depend on the engineering and economic considerations applicable to each location. If the Commission retains the current



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investment disincentives solely on FTTC, then carriers will choose not to deploy either technology in situations where FTTC would otherwise prove economic (but FTTP would not), thus depriving some parts of America of robust broadband capabilities.

For all of these reasons, AFC urges the Commission on reconsideration to change its rules so that in greenfield situations FTTP and FTTC have the same unbundling obligations.

Sincerely,

/s/

John A. Schofield

Chairman of the Board, President, & Chief Executive
Officer

cc: Christopher Libertilli



May 6, 2004

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 -12th Street, S.W., Room 8-B115
Washington, DC. 20554

Re: Ex Parte Letter in Docket #01-338

Dear Commissioner Abernathy:

I am writing to express the gratitude of Advanced Fibre Communications (“AFC”) to the Federal Communications Commission for exhibiting foresight in its *Triennial Review Order* by eliminating much of the unbundling obligations for broadband services. As the resulting expansion in capital dedicated to broadband access technologies demonstrates, the marketplace does respond favorably to the elimination of investment disincentives. In order for the potential of increased broadband capabilities to develop fully, however, it is critical that you expeditiously fix one aspect of the *Triennial Review Order* on reconsideration – the presently disparate unbundling obligations imposed on fiber-to-the-premise (“FTTP”) versus fiber-to-the-curb (“FTTC”) in “greenfield” deployments.

Prompt Commission action in developing the proper broadband policy is even more important now that there is a widespread, bi-partisan recognition of the critical role broadband will play in enhancing all aspects of American lives. President Bush made clear that we must ensure that this country remains on the leading end of broadband technology by setting a goal of “universal, affordable access for broadband technology by the year 2007.” Likewise, a group of twenty Democratic Senators recently sent a letter to the President agreeing “with the need to make broadband a priority since the technology can add \$300 billion a year to the U.S. economy and generate more than 1.2 million jobs.” Universal broadband availability will benefit all Americans by enhancing productivity at work, enabling distant learning and telemedicine, and facilitating more efficient and robust communications capabilities among our people.

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As AFC explained in those meetings, the broadband technology that a carrier will deploy in a particular location will hinge on many factors, including: the geography, the demographics, the costs, the currently deployed technology, where to place responsibility for powering the



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Sincerely,

/s/

John A. Schofield

Chairman of the Board, President, & Chief Executive
Officer

cc: Matthew Brill



May 6, 2004

Commissioner Michael J. Copps
Federal Communications Commission
445 -12th Street, S.W., Room 8-A302
Washington, DC. 20554

Re: Ex Parte Letter in Docket #01-338

Dear Commissioner Copps:

I am writing to express the gratitude of Advanced Fibre Communications (“AFC”) to the Federal Communications Commission for exhibiting foresight in its *Triennial Review Order* by eliminating much of the unbundling obligations for broadband services. As the resulting expansion in capital dedicated to broadband access technologies demonstrates, the marketplace does respond favorably to the elimination of investment disincentives. In order for the potential of increased broadband capabilities to develop fully, however, it is critical that you expeditiously fix one aspect of the *Triennial Review Order* on reconsideration – the presently disparate unbundling obligations imposed on fiber-to-the-premise (“FTTP”) versus fiber-to-the-curb (“FTTC”) in “greenfield” deployments.

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Sincerely,

/s/

John A. Schofield

Chairman of the Board, President, & Chief Executive Officer

cc: Jessica Rosenworcel



May 6, 2004

Commissioner Kevin J. Martin
Federal Communications Commission
445 -12th Street, S.W., Room 8-A204
Washington, DC. 20554

Re: Ex Parte Letter in Docket #01-338

Dear Commissioner Martin:

I am writing to express the gratitude of Advanced Fibre Communications (“AFC”) to the Federal Communications Commission for exhibiting foresight in its *Triennial Review Order* by eliminating much of the unbundling obligations for broadband services. As the resulting expansion in capital dedicated to broadband access technologies demonstrates, the marketplace does respond favorably to the elimination of investment disincentives. In order for the potential of increased broadband capabilities to develop fully, however, it is critical that you expeditiously fix one aspect of the *Triennial Review Order* on reconsideration – the presently disparate unbundling obligations imposed on fiber-to-the-premise (“FTTP”) versus fiber-to-the-curb (“FTTC”) in “greenfield” deployments.

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Commissioner Kevin J. Martin

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Sincerely,

/s/

John A. Schofield

Chairman of the Board, President, & Chief Executive Officer

cc: Daniel Gonzalez



May 6, 2004

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 -12th Street, S.W., Room 8-A204
Washington, DC. 20554

Re: Ex Parte Letter in Docket #01-338

Dear Commissioner Adelstein:

I am writing to express the gratitude of Advanced Fibre Communications (“AFC”) to the Federal Communications Commission for exhibiting foresight in its *Triennial Review Order* by eliminating much of the unbundling obligations for broadband services. As the resulting expansion in capital dedicated to broadband access technologies demonstrates, the marketplace does respond favorably to the elimination of investment disincentives. In order for the potential of increased broadband capabilities to develop fully, however, it is critical that you expeditiously fix one aspect of the *Triennial Review Order* on reconsideration – the presently disparate unbundling obligations imposed on fiber-to-the-premise (“FTTP”) versus fiber-to-the-curb (“FTTC”) in “greenfield” deployments.

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Chairman of the Board, President, & Chief Executive Officer

cc: Scott Bergmann